

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE TRINIDAD PEREZ-AGUILAR,
aka Trini,

Defendant - Appellant.

No. 05-55402

D.C. Nos. CV-04-01935-IEG
CR-97-1351-IEG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Federal prisoner Jose Trinidad Perez-Aguilar appeals pro se the denial of his
28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence for conspiracy

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

to distribute methamphetamine. We affirm the district court's denial of Perez-Aguilar's § 2255 motion as untimely because Perez-Aguilar filed his motion more than one year after his conviction became final, and he failed to demonstrate that his motion qualifies for an exception to the one-year filing limitation. *See* 28 U.S.C. § 2255(3); *United States v. Cruz*, 423 F.3d 1119, 1119-20 (9th Cir. 2005) (per curiam) (holding that the Supreme Court's decision in *United States v. Booker*, 125 S. Ct. 738 (2005), does not apply retroactively to cases on collateral review).

AFFIRMED.